456, 457. In the outcome, defendant was sent back to his trial for murder, as could be done under prior Georgia holdings. *Brantley* v. *State*, 132 Ga. 573, 64 S. E. 676. In other jurisdictions he could be tried again only for manslaughter. *State* v. *Martin*, 30 Wis. 216; *State* v. *Dowling*, 84 N. Y. 478. See *Trono* v. *United States*, 199 U. S. 521; 19 HARV. L. REV. 300. In such a jurisdiction a ruling like that in the principal case would be very unfortunate indeed.

ASSIGNMENTS FOR CREDITORS — VALIDITY — ASSENT OF CREDITORS. — Pursuant to a resolution adopted by his creditors, the debtor executed and delivered a deed of assignment for the benefit of his creditors to the trustee selected by them. Before communication of the execution of the deed to any creditor, a judgment creditor who had not joined in the resolution levied on the property covered by the deed. *Held*, that as the deed passed no title to the trustee, the judgment creditor should succeed. *Ellis & Co.* v. *Cross*, 113 L. T. R. 503 (K. B.).

Under the view generally accepted in the United States, a deed of assignment for the benefit of creditors is enforceable upon execution and delivery, consent thereto on the part of creditors being either unnecessary or presumed. *Nicoll* v. *Mumford*, 4 Johns. Ch. (N. Y.) 522; *Hyde* v. *Olds*, 12 Oh. St. 591; *Tompkins* v. *Wheeler*, 16 Pet. (U. S.) 106. See 11 HARV. L. REV. 412; BURRILL, ASSIGNMENTS, 6 ed., § 257. In England and Massachusetts, however, the assent of creditors is required. In Massachusetts, the assignment is held a fraudulent conveyance until assented to, and is then validated to an amount equal to the aggregate claims of the creditors who assented. *Widgery* v. *Haskell*, 5 Mass. 144. In England, no title passes to the trustee unless one or more creditors subsequently assent to the deed. Until such assent the deed is treated as creating a revocable power given to the "trustee" to dispose of the property for the benefit of the debtor. *Garrard* v. *Lauderdale*, 3 Sim. 1. If the trustee is a creditor, however, it is said that he takes a power coupled with an interest which makes the agency irrevocable and the deed good. *Siggers* v. *Evans*, 5 El. & Bl. 367. In the principal case, it is submitted, that the assent given before the execution should be as good as assent after. An analogy is afforded in the law of sales of personal property where consent prior to an act of appropriation is just as good as assent after the act. WILLISTON, SALES, § 274. In Massachusetts this assent would have prevented the deed from being a fraudulent conveyance to the extent of the total claims of the assenting creditors. *Cf. Fall River Iron Works* v. *Croade*, 15 Pick. (Mass.) 11, 17. Even in England it has been held that a prior consent would at least have prevented any assenting creditor from treating the assignment as an act of bankruptcy. *Ex parte Stray*, L. R. 2 Ch. App. 374.

BILLS AND NOTES — DEFENSES — NEGLIGENCE OF MAKER — SIGNING IN BLANK. — The defendant handed his blank note to a friend to hold till further instructions were given. The next day he directed that it be destroyed or returned to him. The note was filled out and indorsed to the plaintiff, a holder in due course, who now sues. *Held*, that he may recover. *Hancock* v. *Empire Cotton Oil Co.*, 86 S. E. 434 (Ga.).

The maker of a complete instrument keeps it at his peril, and lack of delivery is no defense to a suit by a *bonâ fide* purchaser. *Shipley* v. *Carroll*, 45 Ill. 285. *Contra*, *Sheffer* v. *Fleischer*, 158 Mich. 270, 122 N. W. 543. But the maker of an incomplete instrument cannot be subjected to liability unless express or implied authority has been given for filling the blanks. *Baxendale* v. *Bennett*, 3 Q. B. D. 525; *Ledwich* v. *McKim*, 53 N. Y. 307; *Linick* v. *Nutting & Co.*, 140 App. Div. 265, 125 N. Y. Supp. 93. Though it is well settled that by delivering an incomplete instrument for negotiation the maker authorizes its completion and is liable to a holder in due course regardless of whether the au-

thority was abused, when, as in the principal case, all authority was expressly negatived, the maker can only be held liable if he is precluded by his conduct from denying the validity of the instrument. It is submitted that the bare entrusting of incomplete instruments to a custodian is not such conduct as to subject the maker to liability. *Smith* v. *Prosser*, [1907] 2 K. B. 735; but see *Putnam* v. *Sullivan*, 4 Mass. 45. For with an incomplete instrument there is no duty of care to prevent its getting into circulation. *Baxendale* v. *Bennett*, *supra*. Even negligence in signing and delivering a blank form not intended as a negotiable instrument will not support recovery. *First Nat. Bank* v. *Zeims*, 93 Ia. 140, 61 N. W. 483. *Cf. Costelo* v. *Barnard*, 190 Mass. 260, 76 N. E. 599. There is an exception, however, in the duty owed to the drawee bank not to sign checks in blank. *Trust Co. of American* v. *Conklin*, 65 Misc. 1, 119 N. Y. Supp. 367.

BILLS AND NOTES — INDORSEMENT — FORGED INDORSEMENT: WHETHER DRAWEE MAY RECOVER PAYMENT NEGLIGENTLY MADE TO HOLDER. — A drawee bank, negligently disregarding notice by the drawer to stop payment, paid a check, on which payee's indorsement was forged, to a *bonâ fide* holder for value. On discovering the forgery the drawee bank seeks to recover from the holder. *Held*, that the bank cannot recover. *National Bank of Commerce* v. *First National Bank of Coweta*, 152 Pac. 596 (Okl.).

Where an indorsement is forged, as the holder never receives title to the check, the true owner may recover from the holder any payment the latter has received. *Dana* v. *Underwood*, 19 Pick. (Mass.) 99; *Arnold* v. *Cheque Bank*, 1 C. P. Div. 578. If the owner brings no action the drawee is allowed to recover back from the holder. *Canal Bank* v. *Bank of Albany*, 1 Hill (N. Y.) 287; *Onondaga County Savings Bank* v. *United States*, 64 Fed. 703. See *Robarts* v. *Tucker*, 16 Q. B. 560, 578. It is submitted that the correct theory on which such recovery may be permitted is that the drawee sues on the payee's right of action and holds the sum recovered in trust for him. See Ames, "Doctrine of *Price* v. *Neal*," 4 HARV. L. REV. 297, 307. But the drawee has been held to lose his right if after discovery of the forgery he delays giving notice to the holder. *National Exchange Bank of Providence* v. *United States*, 151 Fed. 402; *United States* v. *Clinton National Bank*, 28 Fed. 357. See 2 DANIEL, NEGOTIABLE INSTRUMENTS, 5 ed., § 1371. In England recovery is barred even though notice is given immediately on discovering the forgery. *London & River Plate Bank* v. *Bank of Liverpool*, [1896] 1 Q. B. 7. But considerable authority holds that the drawee should recover unless the holder has been prejudiced by the delay. *Yatesville Banking Co.* v. *Fourth National Bank*, 10 Ga. App. 1, 72 S. E. 528; *Canal Bank* v. *Bank of Albany*, *supra*. Though on the grounds of business practice a delay in giving notice of a *known* forgery might in itself defeat recovery, it would be unfortunate to go further and let a negligent failure to discover the forgery bar relief when the holder has been in nowise damaged. In the principal case it is difficult to see how the holder would have benefited had the drawee regarded the drawer's notice.

BILLS AND NOTES — PRESENTMENT AND NOTICE OF DISHONOR — WAIVER: ASSENT BY INDORSER TO EXTENSION OF TIME. — The plaintiff brings an action against the defendant as indorser of a note on the face of which the latter had written an agreement to remain bound "notwithstanding any extension of time granted the principal, hereby waiving all notice of such extension of time." Three extensions were given to the maker, no notice of which was given to the defendant, nor was any notice of dishonor by non-payment given him when the last extension period had expired. *Held*, that the indorser's assent to extension constituted a waiver of demand and notice. *First National Bank of Henderson* v. *Johnson*, 86 S. E. 360 (Sup. Ct., N. C.).